

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

ANTHONY CROOK

PLAINTIFF

V.

NO. 4:10CV75-P-B

**CITY OF GREENVILLE, MISSISSIPPI;
WASHINGTON COUNTY, MISSISSIPPI;
SAM DUKES IN HIS OFFICIAL AND PERSONAL CAPACITY;
CORDEL GRAY INDIVIDUALLY AND
D/B/A SOUTHERN WHISPERS NIGHT CLUB; AND
DANNY BEW INDIVIDUALLY AND D/B/A
SOUTHERN WHISPERS NIGHT CLUB**

DEFENDANTS

ORDER

Before the Court are the Motions [#’s 59, 60] of Defendants, Danny Bew and Cordell Gray to set aside the Clerk’s Entry of Default.

Under Federal Rule of Civil Procedure 55(c), a clerk's entry of default may be set aside “for good cause shown.” When determining whether good cause exists, the Court should examine (1) whether the default was willful, (2) whether setting the default aside would prejudice the adversary, and (3) whether a meritorious defense is presented. *CJC Holdings, Inc. v. Wright & Lato, Inc.*, 979 F.2d 60, 64 (5th Cir.1992).

Having considered the foregoing and the record of this case, the Court is of the opinion that the instant motion should be granted. First, defendants have presented adequate excuses for their failure to timely answer the complaint and, therefore, the default was not willful. Second, although plaintiff has offered an objection to the motion, it is clear that setting aside the clerks entry will not greatly prejudice the plaintiff, but will rob the defendant movants of their right to a jury trial. Third, the Court, having considered Defendant’s motion, finds that the defendant

movants will be able to offer an adequate response to the complaint.

THEREFORE, IT IS ORDERED that the instant motion to set aside the Clerk's Entry of Default is hereby **GRANTED**; and Defendants, Danny Bew and Cordell Gray, shall have until December 10, 2010 to respond to the pending complaint.

THIS, the 23rd day of November, 2010.

/s/ David A. Sanders
U. S. MAGISTRATE JUDGE